

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Yu	Team: Squad #16	CCRB Case #: 201602733	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 03/26/2016 3:00 AM	Location of Incident: East 204th Street and Valentine Avenue; 52nd Precinct stationhouse	Precinct: 52	18 Mo. SOL 9/26/2017	EO SOL 9/26/2017	
Date/Time CV Reported Thu, 03/31/2016 12:59 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 03/31/2016 12:59 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. SGT Vincenzo Spinola	04384	894948	052 PCT
3. POF Kristy Abbasciano	00131	933589	052 PCT
4. POM Eric Salisbury	24117	924451	052 PCT
5. POM Joseph Walsh	20272	940848	052 PCT
6. POM Christophe Hansen	03887	949082	052 PCT
7. POM John Smyth	09118	949945	052 PCT
8. POM Michael Carbone	12540	950159	052 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Thomas Demkiw	00691	945658	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Vincenzo Spinola	Abuse: At East 204th Street and Valentine Avenue, in the Bronx, Sergeant Vincenzo Spinola stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Christophe Hansen	Abuse: At East 204th Street and Valentine Avenue, in the Bronx, Police Officer Christopher Hansen stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
C.POM Joseph Walsh	Abuse: At East 204th Street and Valentine Avenue, in the Bronx, Police Officer Joseph Walsh stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
D.POM Michael Carbone	Abuse: At East 204th Street and Valentine Avenue, in the Bronx, Police Officer Michael Carbone stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
E.POM Joseph Walsh	Force: At East 204th Street and Valentine Avenue, in the Bronx, Police Officer Joseph Walsh used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
F.POM Joseph Walsh	Discourtesy: At East 204th Street and Valentine Avenue, in the Bronx, Police Officer Joseph Walsh spoke discourteously to § 87(2)(b)	
G.POM John Smyth	Discourtesy: At East 204th Street and Valentine Avenue, in the Bronx, Police Officer John Smyth acted discourteously toward § 87(2)(b)	
H.POM John Smyth	Force: At East 204th Street and Valentine Avenue, in the Bronx, Police Officer John Smyth used physical force against § 87(2)(b)	
I.POM Joseph Walsh	Force: At East 204th Street and Valentine Avenue, in the Bronx, Police Officer Joseph Walsh used physical force against § 87(2)(b)	
J.POM John Smyth	Abuse: At East 204th Street and Valentine Avenue, in the Bronx, Police Officer John Smyth frisked § 87(2)(b)	
K.POM John Smyth	Abuse: At East 204th Street and Valentine Avenue, in the Bronx, Police Officer John Smyth searched § 87(2)(b)	
L.POM Joseph Walsh	Discourtesy: At East 204th Street and Valentine Avenue, in the Bronx, Police Officer Joseph Walsh spoke discourteously to § 87(2)(b)	
M.SGT Vincenzo Spinola	Abuse: At East 204th Street and Valentine Avenue, in the Bronx, Sergeant Vincenzo Spinola searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
N.POM Joseph Walsh	Abuse: At East 204th Street and Valentine Avenue, in the Bronx, Police Officer Joseph Walsh searched the vehicle in which § 87(2)(b) and § 87(2)(b) were an occupants.	
O. An officer	Abuse: At East 204th Street and Valentine Avenue, in the Bronx, an officer searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
P.POF Kristy Abbasciano	Abuse: At the 52nd Precinct stationhouse, PO Kristy Abbasciano did not process § 87(2)(b)'s complaint regarding officers.	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

### Case Summary

On March 31, 2016, § 87(2)(b) filed this complaint with the CCRB via the Call Processing system.

On March 26, 2016, at approximately 3:00 a.m., § 87(2)(b) his cousin, § 87(2)(b) and his brother, § 87(2)(b) were all sitting inside § 87(2)(b)'s vehicle stopped at a stop light on East 204<sup>th</sup> Street and Valentine Avenue, in the Bronx, when § 87(2)(b) noticed police lights behind their vehicle. Sgt. Vincenzo Spinola, PO Michael Carbone, PO Christopher Hansen, and PO Joseph Walsh in an unmarked vehicle subsequently stopped § 87(2)(b)'s vehicle (**Allegations A, B, C, and D**). PO John Smyth and PO Eric Salisbury arrived on the scene after § 87(2)(b)'s vehicle was stopped. PO Walsh approached the front passenger seat of the vehicle where § 87(2)(b) was sitting, and allegedly pushed his chest into the car seat and used various profanities when speak with § 87(2)(b) (**Allegation E and F**). PO Walsh subsequently pulled § 87(2)(b) out of the vehicle by his jacket (**subsumed within Allegation E**). § 87(2)(b) alleged that after he exited the vehicle PO Smyth removed the phone from his hand and threw it to the ground (**Allegation G**). PO Smyth and PO Walsh subsequently grabbed § 87(2)(b)'s arms, spun him around, and threw him to the ground (**Allegation H and I**). PO Smyth frisked and searched § 87(2)(b) while he was on the ground (**Allegation J and K**). § 87(2)(b) complained that his leg was bleeding and PO Walsh responded by using the word “fuck” several times (**Allegation L**). Sgt. Spinola, PO Walsh, and an unidentified officer subsequently searched § 87(2)(b)'s vehicle (**Allegation M, N, and O**). The officers returned to their vehicle and none of the civilians were arrested or issued any summonses during this incident.

After the incident, § 87(2)(b) went to the 52<sup>nd</sup> Precinct stationhouse in attempt to file a complaint and was informed by PO Kristy Abbasciano that they did not do that and directed him towards a poster (**Allegation P**).

§ 87(4-b), § 87(2)(g)

§ 87(2)(b) provided two video recordings which were irrelevant to this investigation; one recording captured the officers' vehicle driving off and the other recording did not depict the incidents.

This case was originally assigned to Inv. Daniel Smith and was reassigned to Inv. Yu on April 22, 2016, upon Inv. Smith's departure from the agency. This case exceeded the 90-day benchmark because upon receiving the case as a reassignment, the undersigned had to make contact attempts to obtain statements from the additional two victims. The case was further delayed given the number of officers that had to be interviewed and due to scheduling conflicts where the officers had to be rescheduled.

### Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation during his CCRB interview.

- On July 28, 2016, the New York Comptroller’s Office indicated that none of the civilians has filed a Notice of Claim in regards to this incident (Board Review 37).
- § 87(2)(b)

### **Civilian and Officer CCRB Histories**

- This is § 87(2)(b)'s first CCRB complaint (Board Review 20).
- There is not enough identifying information to definitively identify or to determine § 87(2)(b)'s CCRB history.
- § 87(2)(b) has not been involved in any prior CCRB complaints (Board Review 21).
- Sgt. Spinola has been a member of the NYPD for 28 years and has had 9 allegations pleaded against him in 4 CCRB cases; none of his previous allegations have been substantiated. § 87(2)(g)
- PO Smyth has been a member of the NYPD for 5 years and has had 4 allegations pleaded against him in 3 CCRB cases; none of his previous allegations have been substantiated. § 87(2)(g)
- PO Hansen has been a member of the NYPD for 6 years and has had 2 allegations pleaded against him in one other CCRB case; none of his previous allegations have been substantiated. § 87(2)(g)
- PO Walsh has been a member of the NYPD for 10 years and has had 13 allegations pleaded against him in 5 CCRB case; none of his previous allegations have been substantiated. § 87(2)(g)
- PO Carbone has been a member of the NYPD for 5 years and has had 8 allegations pleaded against him in 5 CCRB cases; none of his previous allegations have been substantiated. § 87(2)(g)
- PO Salisbury has been a member of the NYPD for 17 years and has had 21 allegations pleaded against him in 9 CCRB cases, one of which was substantiated.
  - In case 200911393, an allegation of refusal to provide name/shield number had been substantiated against PO Salisbury. § 87(4-b), § 87(2)(g)
- PO Abbasciano has been a member of the NYPD for 12 years and has had 18 allegations pleaded against her in 10 CCRB cases; none of her previous allegations have been

PO Smyth has been a member of the NYPD for 5 years and has had 4 allegations pleaded against him in 3 CCRB cases; none of his previous allegations have been substantiated.

§ 87(2)(g)

- PO Hansen has been a member of the NYPD for 6 years and has had 2 allegations pleaded against him in one other CCRB case; none of his previous allegations have been substantiated. § 87(2)(g)
- PO Walsh has been a member of the NYPD for 10 years and has had 13 allegations pleaded against him in 5 CCRB case; none of his previous allegations have been substantiated. § 87(2)(g)
- PO Carbone has been a member of the NYPD for 5 years and has had 8 allegations pleaded against him in 5 CCRB cases; none of his previous allegations have been substantiated. § 87(2)(g)
- PO Salisbury has been a member of the NYPD for 17 years and has had 21 allegations pleaded against him in 9 CCRB cases, one of which was substantiated.
  - In case 200911393, an allegation of refusal to provide name/shield number had been substantiated against PO Salisbury. § 87(4-b), § 87(2)(g)
- PO Abbasciano has been a member of the NYPD for 12 years and has had 18 allegations pleaded against her in 10 CCRB cases; none of her previous allegations have been

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- PO Walsh has been a member of the NYPD for 10 years and has had 13 allegations pleaded against him in 5 CCRB case; none of his previous allegations have been substantiated. § 87(2)(g)

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- PO Carbone has been a member of the NYPD for 5 years and has had 8 allegations pleaded against him in 5 CCRB cases; none of his previous allegations have been substantiated. § 87(2)(g)

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- PO Salisbury has been a member of the NYPD for 17 years and has had 21 allegations pleaded against him in 9 CCRB cases, one of which was substantiated.
  - In case 200911393, an allegation of refusal to provide name/shield number had been substantiated against PO Salisbury. § 87(4-b), § 87(2)(g)

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- PO Abbasciano has been a member of the NYPD for 12 years and has had 18 allegations pleaded against her in 10 CCRB cases; none of her previous allegations have been

substantiated. § 87(2)(g)

### Potential Issues

The undersigned exhausted contact attempts to both § 87(2)(b) and § 87(2)(b) and without additional identifying information, further database searches did not yield definitive results. The CCRB was unable to contact either of the victims during the investigation.

### Findings and Recommendations

#### Explanation of Subject Officer Identification

- NYPD Documents indicated that Sgt. Spinola conducted a computer check of § 87(2)(b) during the date of incident (Board Review 42). A review of the Roll Call indicated that Sgt. Spinola was assigned to Anti-Crime with PO Salisbury, PO Walsh, PO Hansen, PO Carbone, and PO Smyth (Board Review 41). All of the aforementioned officers' memo books indicated that they were present during the incident (Board Review 22, 24, 26, 28, 30 and 32).
- § 87(2)(b) alleged that an officer used physical force against § 87(2)(b) spoke discourteously to him and to § 87(2)(b) participated in throwing him on the ground, and searched the vehicle. During § 87(2)(b)'s CCRB interview, he described this officer as a white male, 5'9" tall, chubby build with short brown hair (Board Review 01). PO Walsh's physical attributes closely matched § 87(2)(b)'s description. According to PO Walsh's pedigree sheet, he is a § 87(2)(b) (Board Review 25). Additionally, on June 24, 2016, § 87(2)(b) appeared for a photo viewing and identified PO Walsh as the main aggressor during the incident and the one that approached § 87(2)(b) (Board Review 12). However, § 87(2)(b) did not initial the photo to document the positive identification. § 87(2)(b) did not make any additional positive identification during the photo viewing. In PO Walsh's CCRB testimony, he also acknowledged that he primarily interacted with § 87(2)(b) (Board Review 09). Therefore, **Allegations C, E, F, I, L, and N** were pleaded against PO Walsh.
- § 87(2)(b) alleged that PO Walsh and a second officer threw him on the ground. He described this officer as a white male, 6'2" tall, stocky build, with short brown hair and light eyes (Board Review 01). PO Smyth's attributes closely matched § 87(2)(b)'s description in that he is a § 87(2)(b) (Board Review 27). Therefore, **Allegations H, J, K, Q** were pleaded against PO Smyth.
- § 87(2)(b) stated that an officer, who he did not see, took his phone from his hand and threw it against the ground (Board Review 01). PO Smyth was the only officer who acknowledged primarily interacting with § 87(2)(b) and stated that he was in possession of § 87(2)(b)'s phone during the incident (Board Review 07). Therefore, **Allegation G** was also pleaded against PO Smyth.
- § 87(2)(b) alleged that PO Walsh and two other officers searched § 87(2)(b)'s vehicle (Board Review 01). Of all the officers interviewed who were present on the scene, only Sgt. Spinola admitted to searching the vehicle (Board Review 04). Moreover, § 87(2)(b) could not describe the third officer who searched the vehicle. Thus,

**Allegation M** was pleaded to Sgt. Spinola and **Allegation O** was pleaded against an officer.

**Allegation A- Abuse of Authority: At East 204th Street and Valentine Avenue, in the Bronx, Sergeant Vincenzo Spinola stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation B- Abuse of Authority: At East 204th Street and Valentine Avenue, in the Bronx, Police Officer Christopher Hansen stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation C- Abuse of Authority: At East 204th Street and Valentine Avenue, in the Bronx, Police Officer Joseph Walsh stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation D- Abuse of Authority: At East 204th Street and Valentine Avenue, in the Bronx, Police Officer Michael Carbone stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

It is undisputed that officers stopped § 87(2)(b)'s vehicle. However, the circumstances that led to the car stop are in dispute.

§ 87(2)(b) stated that none of the occupants in the vehicle smoked prior to the vehicle being pulled over (Board Review 01). Moreover, § 87(2)(b) denied consuming any alcohol or narcotics during the incident. § 87(2)(b) stated that an officer explained to him that they made an illegal, which § 87(2)(b) denied. As discussed above, the investigation was unable to obtain statements from § 87(2)(b) and § 87(2)(b).

Sgt. Spinola, PO Hansen, PO Walsh, and PO Carbone were the initial officers who stopped this vehicle. All four officers stated that they observed that the vehicle was initially parked by a fire hydrant and then make an illegal U-turn (Board Review 04, 08, 09, and 11). They stated that this vehicle was stopped solely based on their observations of the vehicular traffic infractions and stated that they could have issued summonses for the infractions if warranted. However, ultimately, no summons was issued because the officers stated that they used their discretion. PO Smyth and PO Salisbury arrived after the vehicle had been stopped (Board Review 06 and 07). PO Smyth stated that he also observed the vehicle make an illegal U-turn and that he approached the vehicle to assist the other team that already had the vehicle stopped. PO Salisbury was unaware of the circumstances for why this vehicle was stopped.

Upon approaching the vehicle, Sgt. Spinola, PO Hansen, PO Walsh, and PO Smyth all stated that they smelled an odor of marijuana emanating from this vehicle (Board Review 04, 07, 08, and 09). PO Carbone stated that he later smelled the odor of marijuana when he walked to the driver side of the vehicle (Board Review 11). PO Salisbury stated that he did not smell an odor of marijuana emanating from this vehicle and was not informed by any officers of such (Board Review 06). No marijuana was recovered during this incident. A vehicle search was later conducted and also yielded negative results for marijuana.

When an officer has probable cause to believe that the driver of an automobile has committed a traffic violation, a stop is justified. Additionally, in making that determination of probable cause, neither the primary motivation of the officer nor a determination of what a reasonable traffic officer would have done under the circumstances is relevant, People v. Robinson, 97 N.Y.2d 341

(2001) (Board Review 18). The Supreme Court adopted that an officer's probable cause to believe an individual has violated traffic code rendered the vehicle stop reasonable, Whren v. United States, 517 U.S. 806 (1996) (Board Review 17).

§ 87(2)(g)

**Allegation E- Discourtesy: At East 204th Street and Valentine Avenue, in the Bronx, Police Officer Joseph Walsh spoke discourteously to § 87(2)(b)**

**Allegation L- Discourtesy: At East 204th Street and Valentine Avenue, in the Bronx, Police Officer Joseph Walsh spoke discourteously to § 87(2)(b)**

It is in dispute whether PO Walsh used any profanities when speaking to § 87(2)(b) and § 87(2)(b)

§ 87(2)(b) alleged that PO Walsh made the following statements toward § 87(2)(b) when he approached the vehicle: "Shut the fuck up," "Stand the fuck still you piece of shit," and "I don't give a fuck" (Board Review 01). § 87(2)(b) further stated that PO Walsh also told him § 87(2)(b) "Shut the fuck up," "I don't give a fuck," and, "Shut the fuck up and stay on the fucking floor." Moreover, when § 87(2)(b) told PO Walsh that he was going to go to the precinct, PO Walsh stated, "Good luck with that fucking shit." § 87(2)(b) did not provide a statement. § 87(2)(b) did not provide a statement.

PO Walsh denied using any discourtesies during the incident (Board Review 09). Sgt. Spinola, PO Hansen, PO Carbone, and PO Salisbury stated that they did not hear any officers using discourtesies during the incident, and PO Smyth stated that he did not recall hearing any officers doing so (Board Review 04, 06, 07, 08, and 11).

§ 87(2)(g)

**Allegation F- Force: At East 204th Street and Valentine Avenue, in the Bronx, Police Officer Joseph Walsh used physical force against § 87(2)(b)**

It is in dispute whether PO Walsh pushed § 87(2)(b) and pulled him out of the vehicle.

§ 87(2)(b) alleged that when the officers approached the vehicle, PO Walsh pushed § 87(2)(b) against the seat and subsequently pulled him out of the vehicle by his jacket (Board Review 01).

In his CCRB testimony, PO Walsh stated that § 87(2)(b) stepped out of the vehicle by his own volition after seeing § 87(2)(b) outside the vehicle (Board Review 09). Although PO Walsh stated that because § 87(2)(b) made an aggressive statement, saying that he was good at boxing and would like to see him in an alleyway, leading him to have a concern for his safety, PO Walsh denied pushing or pulling § 87(2)(b) from his seat.

PO Smyth stated that he was focused on § 87(2)(b) during the incident and did not recall if there were any struggles between the other occupants and officers or if the other occupants exited the vehicle (Board Review 07). PO Salisbury did not see how any of the civilians exited the vehicle and did not see any officers pushing a civilian into the seat or pulling them out of the vehicle (Board Review 06). PO Hansen and PO Carbone were aware that § 87(2)(b) exited the vehicle at some point, but they did not see how he was taken out and did not see any officers use any physical force against him (Board Review 08 and 11).

Sgt. Spinola stated that § 87(2)(b) initially refused to exit the vehicle and was noncompliant to PO Walsh's order to exit the vehicle (Board Review 04). Sgt. Spinola stated that § 87(2)(b) eventually complied, but he did not know how he exited the vehicle. He also denied seeing any officers pull him out of the vehicle and did not believe any officers made physical contact with him.

None of the officers interviewed stated that they saw any officers pushing or pulling § 87(2)(b)

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**Allegation G- Discourtesy: At East 204th Street and Valentine Avenue, in the Bronx, Police Officer John Smyth acted discourteously toward § 87(2)(b)**

It is not in dispute that PO Smyth was in possession of § 87(2)(b)'s phone at some point during the incident. However, PO Smyth's subsequent action in regards to the placement of the phone is in dispute.

§ 87(2)(b) stated that as he stepped out of the vehicle, he had his phone in his hand while both of his hands were raised in the air (Board Review 01). § 87(2)(b) alleged that PO Smyth subsequently grabbed the phone from his hand and threw it a foot away on the sidewalk. § 87(2)(b) stated that as a result of his phone being thrown there is now a light scratch on his phone case. A photo of the damage depicting a small hole and damages consistent with scratches on § 87(2)(b)'s phone case was obtained from § 87(2)(b) (Board Review 43). The photo as received by the CCRB on April 29, 2016, but the date the photo was taken is unknown.

In PO Smyth's testimony, he stated that he removed an object out of § 87(2)(b)'s pants pocket after frisking him while he was in handcuffs (Board Review 07). PO Smyth stated that after he removed it, he saw that it was a cellphone and placed it on a railing/concrete where § 87(2)(b) was standing. He denied throwing the cellphone on the ground and stated that



the cellphone was never on the ground. PO Smyth did not recall if § 87(2)(b) was holding the cellphone prior to being placed in handcuffs.

All of the other officers interviewed denied seeing any officers throw a cellphone to the ground (Board Review 04, 06, 08, 09, and 11). Sgt. Spinola stated that he saw § 87(2)(b) holding a cellphone after he was released from handcuffs, but did not see any damages on it. PO Carbone and PO Hansen both denied seeing a civilian holding a cellphone during the incident and PO Salisbury stated that he did not recall seeing any civilians holding a cellphone.

§ 87(2)(g)

**Allegation H- Force: At East 204th Street and Valentine Avenue, in the Bronx, Police Officer John Smyth used physical force against § 87(2)(b)**

**Allegation I- Force: At East 204th Street and Valentine Avenue, in the Bronx, Police Officer Joseph Walsh used physical force against § 87(2)(b)**

It is undisputed that PO Smyth brought § 87(2)(b) to the ground and then placed him in handcuffs. However, it is in dispute whether PO Walsh used any physical force against § 87(2)(b). Furthermore, the circumstances of whether the force used was appropriate are in dispute.

In his CCRB testimony, § 87(2)(b) alleged that after exiting the vehicle by his own volition, he immediately raised his hands in the air out of fear for his safety and PO Smyth and PO Walsh immediately grabbed his arms, spun him around, and threw him on the ground (Board Review 01). During a follow up statement, § 87(2)(b) denied moving or pulling away from the officers (Board Review 02). He landed faced down on the ground and was subsequently placed in handcuffs. § 87(2)(b) stated that when an officer held down his leg after he had been brought to the ground and after he was placed in handcuffs. § 87(2)(b) stated that his leg began to bleed during the incident because he has chronic psoriasis which causes his skin to crack and bleed easily.

PO Smyth stated that he intended to place § 87(2)(b) in handcuffs because he would not stop moving and was screaming while in the vehicle (Board Review 07). PO Smyth stated that despite telling § 87(2)(b) to stop moving, § 87(2)(b) continued moving by waving his arms and placing his hands inside his pants pockets multiple times. PO Smyth then instructed § 87(2)(b) to exit the vehicle for his safety. In response, § 87(2)(b) continued waving his arms and screaming outside of the vehicle. PO Smyth went to grab § 87(2)(b)'s arm to place him in handcuffs, but § 87(2)(b) pulled away and moved in a “hula hoop” movement, described as moving his body side to side, back and forth, and up and down. PO Smyth subsequently slowly brought § 87(2)(b) down to the ground by using a tactical maneuver. During PO Smyth’s follow up interview, PO Smyth described this maneuver as an “arm bar.” PO Smyth stated that he grabbed § 87(2)(b)'s arm, twisted his wrist, pushed his elbow, and then took him to the ground (Board Review 10). PO Smyth denied using any

additional force and stated that there were no difficulties placing § 87(2)(b) in handcuffs once he was on the ground. PO Smyth stated that no other officers assisted him and that he did not see any officers using force against any civilians.

PO Carbone stated that he only saw § 87(2)(b) moving his left hand up and down towards the side of his body when he exited the vehicle and did not see any additional movements once he was out of the vehicle (Board Review 11). PO Carbone further stated that PO Smyth held § 87(2)(b)'s right side of his body and took him down slowly by taking his right arm and guiding him down while § 87(2)(b) went with the motion. PO Carbone subsequently saw PO Smyth handcuff § 87(2)(b) without any difficulties. PO Carbone denied assisting PO Smyth and did not see any other officers do so.

Sgt. Spinola stated that § 87(2)(b) was screaming and observed him “bopping” his body up and down and waving his arms in the air while seated in the vehicle (Board Review 04). Sgt. Spinola directed PO Smyth to remove § 87(2)(b) from the vehicle because he did not know what was wrong or if he was possibly emotionally disturbed. At some point, Sgt. Spinola’s focus shifted from § 87(2)(b) to § 87(2)(b) because § 87(2)(b) was being noncompliant and gave PO Walsh a hard time. When Sgt. Spinola saw § 87(2)(b) again, he § 87(2)(b) was already on the ground outside of the vehicle in handcuffs.

PO Hansen and PO Salisbury both denied seeing any officers using any physical force against § 87(2)(b) and stated that § 87(2)(b) was already placed in handcuffs when they saw him and did not see him on the ground at any point (Board Review 06 and 08).

PO Walsh denied using any physical force against § 87(2)(b) and stated that he did not have any interactions with § 87(2)(b) (Board Review 09). Moreover, he did not see if he was handcuffed during the incident or see him on the ground.

Officers may use only the amount of force necessary to overcome resistance and to effect an arrest, Patrol Guide Procedure 203-11 (Board Review 13).

§ 87(2)(g)  
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**Allegation J- Abuse of Authority: At East 204th Street and Valentine Avenue, in the Bronx, Police Officer John Smyth frisked § 87(2)(b)**

**Allegation K- Abuse of Authority: At East 204th Street and Valentine Avenue, in the Bronx, Police Officer John Smyth searched § 87(2)(b)**

It is undisputed that PO Smyth frisked and searched § 87(2)(b). However, the circumstances leading to the search and the area(s) searched are in dispute.

§ 87(2)(b) stated that after he was placed in handcuffs, he felt PO Smyth patting down his front right and left pants pockets, chest, and waistband (Board Review 01). Moreover, § 87(2)(b) felt PO Smyth placing his hands inside of his two front pants pockets and placing a finger inside his sneakers.

PO Smyth stated that when he was standing next to the rear passenger window, § 87(2)(b) was screaming, acting irate, and using his hands as he was speaking (Board Review 07). PO Smyth also saw § 87(2)(b) placing his hands inside his pants pockets multiple times. PO Smyth instructed § 87(2)(b) to stop moving, but § 87(2)(b) did not comply. PO Smyth then told § 87(2)(b) to exit the vehicle for his safety. PO Smyth stated that § 87(2)(b) was still fidgeting by moving his hands back and forth, waving his hands, and screaming. PO Smyth stated that he did not know what § 87(2)(b) was placing in his pants pockets and that § 87(2)(b)'s fidgeting led him to believe that he might have had weapons. PO Smyth denied seeing any bulges on § 87(2)(b). PO Smyth frisked § 87(2)(b) for weapons by patting his waistband and two front pants pockets where he saw § 87(2)(b) initially grabbing. During the frisk, PO Smyth felt an object inside § 87(2)(b)'s pants pocket which PO Smyth initially stated was possibly a cellphone, but he later stated in his testimony that he did not know it was a cellphone. PO Smyth described the object as square and black and stated that he removed it because it was sticking out of the pants pocket. In a follow up CCRB interview, PO Smyth stated that he removed the object from § 87(2)(b)'s pants pocket because he felt a hard object and did not know what it was (Board Review 10). Moreover, PO Smyth did not recall placing his finger inside § 87(2)(b)'s sneakers or shoes and did not recall if he suspected him of hiding anything in his sneakers or shoes.

None of the officers interviewed stated that they observed § 87(2)(b) placing his hands in his pants pockets. Moreover, only PO Carbone witnessed the § 87(2)(b)'s actions after he stepped out of the vehicle and prior to him being placed in handcuffs (Board Review 11). PO Carbone stated that he only observed § 87(2)(b) moving his left hand up and down towards the side of his body once he exited the vehicle.

A frisk requires reasonable suspicion that a suspect is armed, People v. Debour, 40N.Y.2d 210 (1976) (Board Review 19). Where a visual observation or a limited protective frisk of a subject reveals a bulge, that bulge must look or feel like a weapon before the officer is entitled to subject him to a further, more intrusive search, People v. Clark 213 A.D.2s 946 (3<sup>rd</sup> Dept. 1995) (Board Review 44).

§ 87(2)(g)  
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§ 87(2)(g)

**Allegation M- Abuse of Authority: At East 204th Street and Valentine Avenue, in the Bronx, Sergeant Vincenzo Spinola searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation N- Abuse of Authority: At East 204th Street and Valentine Avenue, in the Bronx, Police Officer Joseph Walsh searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation O- Abuse of Authority: At East 204th Street and Valentine Avenue, in the Bronx, an officer searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

It is not in dispute that Sgt. Spinola searched § 87(2)(b)'s vehicle. However, whether additional officers also searched the vehicle is in dispute.

§ 87(2)(b) stated that none of the occupants in the vehicle smoked prior to the vehicle being pulled over and denied consuming any alcohol or narcotics during the incident (Board Review 01). § 87(2)(b) alleged that Sgt. Spinola, PO Walsh, and another officer entered and searched § 87(2)(b)'s vehicle. § 87(2)(b) stated that the officers did not ask for consent to search this vehicle. He saw PO Walsh in inside the back seat of § 87(2)(b)'s vehicle and saw an officer enter the driver seat.

Sgt. Spinola stated that once he smelled an odor of marijuana emanating from the vehicle, he suspected that there was a possibly of marijuana inside the vehicle. He stated it could have been the scent of unburned or burned marijuana (Board Review 04). Sgt. Spinola looked in the “lunge-able” areas described as the back seat, front seat, and the floor. He denied going inside any compartments. He stated that he was looking for weapons and contraband. However, Sgt. Spinola clarified that there was no specific reason for why he thought there was a weapon and that the search was primarily for contraband. Nothing was recovered as a result of the vehicle search. Moreover, Sgt. Spinola did not see any other officers search the vehicle.

All of the additional officers interviewed denied entering or searching the vehicle. PO Walsh stated that even though he smelled an odor of marijuana emanating from this vehicle, he denied taking any investigative steps in regards (Board Review 09). PO Salisbury did not recall if the vehicle was ever searched (Board Review 06). PO Hansen was not aware if the vehicle was ever searched (Board Review 08). PO Smyth did not recall who searched the vehicle, but affirmed that the vehicle was checked for “guns, weapons, and anything illegal.” PO Carbone saw Sgt. Spinola searching the vehicle at one point, but did not know why he searched the vehicle (Board Review 11). Moreover, PO Carbone stated that nothing was recovered as a result.

The odor of marijuana alone is sufficient to provide police who are trained and experienced in the use of marijuana, with probable cause to search a vehicle and its occupants, People v. Johnson Misc.3d 1214A (Sup. Ct. Queens 2009) (Board Review 16).

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**Allegation P- Abuse of Authority: At the 52nd Precinct stationhouse, PO Kristy Abbasciano did not process § 87(2)(b) s complaint regarding officers.**

It is undisputed that § 87(2)(b) attempted to file a complaint at the 52<sup>nd</sup> Precinct Stationhouse on March 26, 2016, and that his complaint was not processed.

§ 87(2)(b) stated that on the same day, immediately after the incident (the investigation was unable to determine the approximate time), he went to the 52<sup>nd</sup> Precinct stationhouse to file a complaint against officers involved in the previous encounter (Board Review 01). At the stationhouse, § 87(2)(b) spoke to PO Abbasciano and expressed that he wanted to file a complaint against police officers and provided details of his complaint. PO Abbasciano allegedly told § 87(2)(b) “We don’t do that here, you have to call that number right there,” pointing to a small red poster that hung high on the wall facing the telephone switchboard desk. The poster had a 1-800 number in black text. PO Abbasciano then told § 87(2)(b) “Get out of here.” § 87(2)(b) wrote down the number and subsequently left the stationhouse.

PO Abbasciano was assigned to stationhouse security during this incident (Board Review 03). In her testimony, PO Abbasciano stated that she saw § 87(2)(b) exit a white SUV and running up to the stationhouse as she stood outside. PO Abbasciano stated that § 87(2)(b) told her that he wanted to file a complaint because he was thrown onto the ground by officers in plainclothes. PO Abbasciano and § 87(2)(b) both entered the stationhouse. PO Abbasciano stated that she informed a sergeant at the desk that § 87(2)(b) wanted to file a complaint

against police officers. PO Abbasciano stated that she was then instructed by the sergeant to return to her post and that he would handle it. She had no further interactions with § 87(2)(b) [REDACTED]. PO Abbasciano did not know which sergeant she spoke to and stated that at the time of incident she had only been assigned to the command for approximately a week. PO Abbasciano stated that the CCRB poster in the 52<sup>nd</sup> Precinct stationhouse is located by the side of the main doors after the vestibule area. She denied refusing to process § 87(2)(b) [REDACTED]'s complaint or directing him to this poster. She further stated that to her understanding, officers are not allowed to take complaints against another same ranking officer and must notify a supervisor.

Sgt. Thomas Demkiw, who was assigned as the desk officer during the date of incident, did not have any independent recollection of this incident (Board Review 05). In Sgt. Demkiw's CCRB testimony, he stated that he rarely worked the midnight tour and did not recall speaking with PO Abbasciano in regards to a civilian filing a complaint during the incident. Sgt. Demkiw also stated that a civilian could file a complaint by phone, by mail, or in person at the stationhouse. Moreover, he stated that any officers besides the T/S Operator could help a civilian file a complaint.

There were no entries in the Command Log indicating that § 87(2)(b) [REDACTED] was at the stationhouse on March 26, 2016 (Board Review 36).

If a civilian wishes to file a CCRB complaint in person at a police stationhouse, officers must provide the person with a copy of a Civilian Complaint Report with which to file the complaint, Patrol Guide Procedure 207-31 (Board Review 15).

§ 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

§ 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]

§ 87(4-b), § 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

§ 87(4-b), § 87(2)(g) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

[Redacted]  
[Redacted]

[Redacted]  
[Redacted]  
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[Redacted]  
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§ 87(4-b), § 87(2)(g) [Redacted]  
[Redacted]  
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Squad:

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date